IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 255 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PREMCHAND M SHAH - Appellant(s)
Versus
HARSHADBHAI H JANI & 1 - Defendant(s)

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Appearance :
NOTICE UNSERVED for Appellant(s) : 1,
None for Defendant(s) : 1,
MR SV RAJU for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 12/03/2007

ORAL JUDGMENT

This appeal is filed by the original claimant for enhancement of compensation. It was filed by late Mr. AK Shah, learned advocate for the appellant. During the pendency of the appeal he has expired. The Registry of

this Court has issued notice to the appellant intimating him about the demise of the learned advocate and to make alternative arrangement. However, despite best of the efforts, notice is not served since the whereabouts of the appellant are not known to any-one. The accident took place in the year 1981 and the appeal is of the year 1984. It is, therefore, very obvious that the appellant who was Government servant and who had 8 years to go on the date of his deposition, must have retired by now and may have settled down in his native place. The respondents also do not have any idea about the present address of the appellant. In view of the same, there is no valid reason to keep the matter pending indefinitely. I have closely perused the relevant papers of the appeal and I have carefully heard Mr. Chetan Pandya, learned advocate for respondent no. 2. This appeal can be decided in absence of the appellant for the circumstances stated above. Of-course it is made clear that in case of any difficulty at a later stage, the appellant as and when he comes to know about the judgment, can approach this Court for seeking any clarification.

2. The accident in question took place on 22/6/1981. The appellant was knocked down by the scooter bearing registration No. GJ-1-9312. On the date of accident it was driven by respondent no. 1 in his capacity as owner of the vehicle. As a result of the impact, the appellant sustained serious injuries. He was removed to hospital for treatment. Even after his discharge from the hospital, he could not attend to his duty for sometime. He, therefore, lodged

claim for compensation of Rs.1 lac. His claim was opposed by respondents by filing written statement at Exh. 28. They denied the averments and attributed negligence to the appellant. The Claims Tribunal, on the basis of the material produced before it, held that the owner of the scooter drove the vehicle on the relevant date, was solely responsible for causing accident. According to the Tribunal, the vehicle was driven in rash and negligent manner.

2.1. The Tribunal assessed the quantum of compensation and held that the appellant was entitled to receive Rs.44,275/- by way of compensation together with interest @ 6% p a and proportionate costs. The appellant is not satisfied with the quantum of compensation and hence this appeal.

3. I have heard Mr. Chetan Pandya, learned advocate for respondent no. 2. He has submitted that there is no need to enhance the compensation since it is properly assessed by the Tribunal. He has further submitted that the appellant has not suffered any economic loss either actual or prospective and, therefore, there is no need to increase the compensation. Lastly, he has submitted that there is no merit in this appeal and it is required to be dismissed.

4. I have carefully considered submissions of Mr. Pandya. I have also closely perused the record of the appeal. So far as the negligence of respondent no. 1 is concerned, the Tribunal has held that he drove the vehicle negligently and in rash manner and he was responsible for causing the accident.

This finding is not challenged by respondents and, therefore, it has become conclusive. I have also perused the discussion on it and I do not find any justifying reason to set-aside that finding.

4.1. So far as the quantum of compensation is concerned, the Tribunal has kept in view the medical evidence as well as oral testimony of the appellant. The Medical Officer has assessed the disability at 20% since the appellant had sustained fracture in the left leg and there was considerable pain suffered by him and there appears to be shortening of leg. Thus, in my opinion, apart from the disability, since there is shortening of leg, the amount awarded under the head of pain, shock and suffering is slightly less. The appellant has been granted Rs.12,500/- under this head, which is required to be increased to Rs.15,000/-. Thus, under the head of pain, shock and suffering, the appellant is entitled to Rs.2,500/- as additional compensation.

4.2. So far as the loss of earning capacity is concerned, it appears that the Tribunal has not properly appreciated the principle for determining the compensation under this head. It is true that no financial loss has been caused to the appellant on account of the injury and resultant disability. However, the fact remains that body as a whole there is disability of 10%. The appellant, at the relevant time, was aged 52 years and there were still 8 years to go in service. He was Executive Engineer at that time. There was every possibility that even after retirement he would have got suitable job as an experienced engineer. He was drawing salary of Rs.2050/- at the time of accident. The Tribunal has

calculated loss of earning capacity on the basis of the said income. The Tribunal has lost sight of two glaring factors, one is that the salary would not have remained static at Rs.2050/-, but it would have increased even during the remaining period of service of the appellant. Further after retirement the appellant would have utilized his experience and would have generated decent income. The second aspect is that though his salary was Rs.2050/- and disability 10%, the Tribunal has considered the loss of earning capacity at Rs.125/- and no valid reasons have been assigned for the same. Thus, even on the basis of the evidence as it is, the appellant would have suffered loss at Rs.205/- per month instead of Rs.125/-; but as already stated above, his income would not have remained static. The loss of earning capacity, therefore, can safely be put at Rs.250/- per month. If it is multiplied by 12, the figure would be Rs.3,000/- and that would be the annual loss of income. Applying the multiplier of 8, it would come to Rs.24,000/-. Thus, under this head, the appellant is entitled to receive additional amount of Rs.12,000/- as compensation. On other counts, I do not find much merit. Thus, the appellant is now entitled to Rs.14,500/- as additional compensation together with interest @ 6% p a from the date of application till realization and proportionate costs. The appeal is partly allowed.

[Akshay H Mehta, J.]

* Pansala.